

A Letter to

Sir RICHARD ASTON, Knt.

One of the Judges of his Majesty's Court of
King's Bench, and *late* Chief Justice of the
Common Pleas in Ireland;

Containing a Reply to his scandalour Abuse,
and some Thoughts on the modern Doctrine
of Libels:

By ROBERT MORRIS of Lincolns Inn Esq.
Barrister at Law, and *late* Secretary to the Sup-
porters of the Bill of Rights.

Non me tua fervida terrent
Diſſa FEROX; Dí me terrent. VIR.

London. 1770.

Printed for Geo: Pearch N. 12. Cheapſide. And ſold by
all the Bookſellers.

A letter to

St. Richard's Abbey, N. H.

One of the Judges of the High Court
King's Bench and the Chief Justice
Common Pleas in England

Containing a Report to the House of Commons
on the subject of the



the House of Commons
and the House of Lords
power of the House of Commons

The House of Commons
The House of Lords

The House of Commons
The House of Lords

The House of Commons
The House of Lords

(An examined COPY.)

In the King's Bench.

The KING against JOHN ALMON.

ROBERT MORRIS of Lincoln's Inn in the county of Middlesex Barrister at law maketh oath that he this Deponent having been used to buy pamphlets and other printed books at the shop of the Defendant John Almon did within a very few days after the publication of the London Museum for the month of January last go to the said shop and there ask the said Defendant for the said pamphlet of the London Museum being the same as that for which the said Defendant has been informed against in

this court upon which the said Defendant told him this Deponent that he had not got the said pamphlet and that he did not sell the same and he the said Deponent was thereupon obliged to go away without the said pamphlet Nor has he at any time since procured himself the same from the said Defendant although he this Deponent (*verily believing in his conscience that the said pamphlet did not contain any libellous matter whatsoever*) has very lately purchased the same elsewhere And this Deponent farther saith that to the best of his this Deponent's knowledge recollection and belief as far as the distance of time from the said transaction will permit him to be certain (this Deponent not then nor till after the late trial of the Defendant Almon having the least idea of giving testimony concerning any part of this matter in a court of justice) at the same time that he this Deponent was in the shop of the said Defendant as abovementioned some other person to this Deponent unknown came to the said shop and asked the said Defendant for the said pamphlet of the London Museum Where-

upon the said Defendant gave to the said person the same answer that he had before given to this Deponent (that is to say) that he had it not or words to that effect and thereupon the said person went away without purchasing the same.

Sworn in Court

ROBERT MORRIS.

June 30, 1770.

By the Court.

upon the last day of the year
before the year 1800 (that is to say) that
the year 1800 (that is to say) that
the year 1800 (that is to say) that
the year 1800 (that is to say) that
the year 1800 (that is to say) that

ROBERT A. A. A.

To

SIR RICHARD ASTON, Knt.

One of the Judges of his Majesty's Court of
King's Bench, and late Chief Justice of
the Common Pleas in Ireland.

Sir,

You had an advantage over me in
your situation, when you took occasion in
the court, where you sat as judge and I at-
tended as barrister, to cast a very injurious
reflexion upon my character, which I trust
will not suffer with the Public, either from
the person, who accuses me, or from the
matter of his accusation. I am now appeal-
ing to a tribunal, where we both are equal;
a tribunal to the full as awful and just, and
at least as candid and impartial, as that

where you are placed ; though not armed with all those dreadful powers, which your court has assumed.

The testimony which it happened to be in my power to give, together with the depositions of others, in the prosecution of Mr. John Almon, were, I am satisfied, alike open to the observations of the counsel and the judges in the cause ; but it is one thing to make fair observations upon an affidavit, and another to insinuate without proof an accusation of wilful perjury : the former I should have heard, as I ought, with patience, but the latter I am no more bound to receive in silence, than you were authorised to make it. I was prevailed upon, by the solicitations of my friends, not to give instantly that reply which your invective deserved ; and I acquiesced in their judgment to be passive on the occasion, being unwilling to arrogate to myself any extraordinary liberty, or to trespass upon business of greater importance. Besides, your temper left me no reason to doubt, that you would have made use of

your authority, to silence me, if I had ventured a defence: For I have not forgotten, that after having made a rule upon a printer to shew cause, when he attempted to shew it, you declared you would quit the Bench if he was suffered to proceed; tho' perhaps, in my case you might have changed your plan, and have had patience to hear me so far, as to ground a pretence for a more speedy execution of your resentment by attachment. The same reason however does not subsist, why you should not be addressed out of court, where you can impose no arbitrary silence; and if you shut your eyes against my letter yourself, you cannot hinder the rest of the world from reading it. Besides I promised my friends, that you should hear from me in public; and one of those friends promised in return, that you should also hear of this matter in a house, which former judges have had reason to dread.

Though not dignified with an office under the Crown, nor desirous of any such distinction, I am not used to pass over, unnoticed,

affronts or accusations of so gross a nature; nor shall your high rank, or any other consideration deter me from vindicating my honor in the only way now left. The proceedings of our courts of justice are not yet, like those in Scotland and other countries, of that close nature, as to be too sacred for an open comment. The words which you used concerning me have been already condemned in the minds of most of those, who heard them; they wait only to be more known, in order to be more condemned. I know there are men who dread the lash of public writings, and who fear not any other censure human or divine. Whether you are one of those I will not take upon me to say; but I can venture to assert, without fear of contradiction, that we should not have seen so many inveterate persecutions of the press, but for the dread that remains in some minds of this popular censure, and the profuseness with which some men afford occasion for it.

I need hardly say, that the affidavit pre-

fixt to this letter, is one, among several others made by different persons, in extenuation of the crime of which the defendant Almon had been found guilty; and which were laid before the court, according to the usual mode, for their consideration with respect to the degree of punishment. The words which drew upon me the censure of which I complain, and which words I now undertake to defend and justify, I have marked in distinct characters in that affidavit; and the way in which this censure was introduced, I will state as exactly as my own memory, assisted by that of others, will permit. After having expressed your extreme abhorrence of (what you termed) *the malice sedition and falsehood* of that *virulent and rancorous* letter to the king; you proceeded to say, that “ however astonishing it might be, that there should be found in the kingdom one single man, who should entertain a different idea of it, and venture *to say in an affidavit, that it is not a libel*, you could not help considering it, as calculated to vilify a most gracious and virtuous king, to alienate the minds of the

people from their sovereign, and to excite insurrection and rebellion." Soon after, in enumerating those affidavits, which alone you said had influenced the judgment of the court in the punishment they were going to inflict, you excepted mine, and added, "that as to the affidavit of THAT MAN, who had, *though but in a parenthesis*, put into his affidavit, that he did not think the letter signed Junius to be a libel, you should, for your part, pay very little regard to any affidavit he should make." The plain and obvious sense of these polite and elegant expressions, I take to be this. "Mr. Morris has, by this affidavit, shewn himself to be a man of so abandoned a conscience, as not to deserve credit in a court of justice." If any man can prove these words to bear a different import, I will submit; if not, submission ought to be yours.

A judge, seated in a court of justice, so tenacious of their power to revenge contempts upon themselves, so ready to vindicate the characters of ministers of state, great men

in office and even the members of the house of commons; such jealous protectors of every man's good name; so ready to punish all offenders against the reputation of their neighbours; ought surely to be the last to set an example of slander, or to incur that reproach, which has often been thrown upon the bar (but never I hope before upon the bench) of using the privilege of their station, to cast abuse upon the characters of private men, who might attend to give their evidence. But that a judge, so distinguished too for his humanity, gentle manners and politeness, as Mr. Justice Aston, should in the same breath, with which he is condemning a libeller, subject himself to a similar accusation; a judge, who in a charge to the grand juries at Dublin declared, that *character was to every man of a generous mind dearer than his property*; that he should make so public and severe an attack upon another's reputation, is perfectly astonishing, not so much from the disposition, as from the imprudence of the speaker. Lay, Sir, your hand upon your heart, and confess to me, whether you are serious, in

suspecting upon so slight an occasion, a gentleman, of (whom you had never heard other ill, than that he differed with you in politics,) of the horrid crime of perjury. I am afraid, Sir, this dreadful sin, this mockery of a solemn appeal to God must lie very light upon your mind, that you can so easily bestow the censure upon me. But if I am not charged to have committed perjury, why do you say, you shall pay no attention to any affidavit that I shall make? A charge, which from the place in which it was made will by some be thought an act of cowardice; but they will at the same time recollect, that the coward and the blusterer usually go together.

Strange indeed and violent are the effects, which political disagreements cause on men's tempers, dispositions and judgements! I know by experience that almost as little candor is to be expected, even from the candid, towards those, who differ from them in their political, as in their religious creed. But though I had no reason to expect, that if you did me the honor of mentioning my name, you would

treat me with all the civility and complaisance, which you showed to Justice Gillam, when he appeared at the bar of the Old Bailey, to answer for a wanton massacre of his fellow citizens in St. George's fields, yet I had as little reason to suppose, that a judge would in open court insinuate against me the guilt of perjury for daring to differ in opinion with him, upon what he allows to be a point of law, and that even before I was apprised of his judgement upon the subject. I shall not take advantage of so pitiful an evasion, as to contend that my affidavit is consistent with the possibility of never having read the contents of the London Museum. I had read it, and paid particular attention to the letter of Junius, which has been prosecuted. It is upon that ground alone I wish to support my affidavit. I know not, whether you think there is much difference between perjury in a parenthesis and out of one; but whatever hard names you may please to give my conduct, my offence is at most but an error in judgement. My opinion differed from yours, but such was my real opinion.

I declared it upon oath; and the world will give me credit, when I say that an oath is as sacred an obligation upon my mind, as upon your own.

A judge should not blend the character of accuser with his own; or should find at least as good a foundation for his accusations, as occasion for making them. I am, Sir, "THAT MAN," whom, in that contemptuous manner you have described to have ventured to swear, that the paper signed Junius, which lay before the court, is not a libel. Read again the affidavit; let any person read it. I have said, that, at the time I purchased the London Museum, *I purchased it verily believing it to contain no libellous matter whatsoever.* Is this swearing, that the paper is not a libel? Are these words, which deserve from a judge the imputation of perjury? I was not so impertinent, as to make that decisive declaration upon oath, which you have fixed upon me; a declaration however, which if necessary, would I believe readily be made by thousands in this kingdom. Had I been upon

the jury to try the fact, I should then have made that declaration in the same manner as those two noble juries did, whom you have thought fit to involve, without naming, in the same accusation with myself. Two respectable juries of the city of London have directly declared the same thing; and the third declared upon their oaths, that Mr. Woodfall is guilty *of printing and publishing* only, which was acquitting him of the charge of printing and publishing a scandalous and seditious libel; a verdict incapable of any interpretation consistent with common sense, unless taken in the same light with the two other verdicts, and which therefore should be taken in that light only. I am yet aware of a fourth (and I doubt not it will be urged upon this occasion) where this matter received a different determination, the publisher being found generally guilty of the information. But then we must recollect the influence, which the judge may well be supposed to have had; and that the opinion of that jury can little avail in this matter from the deference which they paid to their direc-

tor; who, as he has since informed us, told them, that they had nothing to attend to, but the mere fact of publication. I will not here mention, what suspicions fell upon that jury, who could suffer their understandings in an evidence of fact to be led by Lord Mansfield; nor will I more than hint, that one of that jury, being a member of the house of commons, the charge upon which house took a principal share of the information, ought to have challenged himself, as interested in the litigation, notwithstanding the reputation he then had of joining against the ministry. We heard in this case a doctrine built upon a foundation; that the presumption of guilt is as strong as any presumption of innocence. And we saw a jury implicitly submitting their consciences to receive the dictates of the judge for their belief; that however slight the evidence might be, which was offered, they were driven to a necessity of finding a defendant guilty, if no evidence was produced in his behalf. The admission of a fact proved upon another, doubtful even whether he was a servant, was

not be looked upon as some inducement to a verdict, but was to become conclusive proof, unless counteracted by other positive evidence; whatever opinion the jury might entertain of the defendant's not being a guilty publisher. They adopted these maxims, and found one publisher of Junius's letter to be guilty of a libel. Yet was guilt found under such circumstances, that punishment, it's natural concomitant, became almost unjust. But I firmly believe, that this consideration would not have so much availed in the judgment of the King's Bench, but that it would have been too alarming to have rejected without cause an affidavit produced in the defendant's behalf, and yet have inflicted any very heavy fine upon him for his delinquency. We cannot however suppose from the decisive verdicts of acquittal, which were given by the London juries, that they were possessed with a like degree of complaisance, as the gentlemen of Middlesex; though Lord Mansfield would in the same manner have confined them to the simple evidence of publication. A restraint upon their free powers

of enquiry, which they justly disdained; and to which they replied by a verdict, which, as the cases were circumstanced, can acquit them from perjury upon no other supposition, than their persuasion of the paper being innocent. It is in vain therefore to suggest a probability of their determinations being founded upon other grounds; for the mere acts of printing and publishing were notoriously avowed, and the application of the inuendos, of which Lord Mansfield, to cover his other designs, has lately made such a parade, was in one case at least not disputed.

In opposition to these juries, you, Mr. Justice Aston, declare the letter of Junius universally abhorred by all well-wishers to the government. If by that phrase you mean a futile and wretched ministry, in which your associate Lord Mansfield is a principal figure, and where, as you share in the emoluments, you may possibly bear yourself a part, I will readily allow it. But if you mean, the free and excellent constitution of this country, I declare, that you, as a judge, take

a licence in speaking, which I, as a private barrister, would by no means have assumed; because the fact is notoriously otherwise. You then boldly pronounce a conviction of perjury or sedition upon every one, who does not believe the letter of Junius to be a libel. And yet one may venture to appeal to the whole nation, whether that letter was not almost as universally applauded, as it was read; and whether it is not now considered, as a model of political truth, as well as, the standard of elegant composition. Indeed the fact speaks itself. The venders of it would never have suffered a prosecution, if the public demand for the letter had not shown, that mankind were pleased, not shocked; that they admired, not condemned, the sense, the spirit, the justice and veracity of the author; and I believe no man ever heard of shuddering and being shocked at the letter, except in the court of King's Bench, or the supreme court at St. James's.

I am then that hardy and singular mortal, who is contented with the sanction

of twenty-four *tried* and *sworn* men for his opinion. We must stand or fall together in the sentiments of the Public upon this occasion. To the honest citizens of London will I leave it, Sir, to resent the injury you have done them ; and to the Public to retort upon yourself the imputations, which you have thrown with so liberal a hand upon others.

The circumstances, which I had to lay before the court, called upon me to express my conception of the pamphlet then in judgment. Little as I may be supposed to know of law, I know so much of that law of libels, which obtained in the odious court of Star-chamber, and the disposition of some modern judges to enforce that law, that I was doubtful, whether it might not even be held an offence, to purchase a paper, which should afterwards be discovered, or at least if then believed, to be a libel. I am aware this can be at best but Star-chamber law. But I have observed a Chief Justice maintain a particular partiality for the precedents of that arbitrary court ; claim every doctrine

there held to be Law for his own ; and when the court of King's Bench shall have adopted a sufficient number of them, with the same latitude, as it lately has done that doctrine, which sprang from the ruins of the Star-chamber, and is truly calculated to perpetuate it's powers in the case of libels, that juries are mere judges of the innocent acts of printing and publishing and the verbal supply of a parcel of inuendos, there will arise the same necessity of abolishing that court by act of parliament, and the same cry amongst the people to punish the arbitrary judges, who shall preside there.

My knowledge of a fact, that the pamphlet was universally sold in other shops, led me to mention a circumstance much in Mr. Almon's favor, that, though I had been refused it at his shop, I had been able to purchase it elsewhere. When I mentioned this, I had a right to say something in apology for myself. It would not be a very graceful act in any other person, than a messenger of the treasury, to go about purchasing libels at every shop. I therefore said, what I had a right

to say in my own vindication, and without officiousness, that I did not believe the pamphlet to contain a libel. I am for this treated by Mr. J. Aston, as a man of so prostituted a character, as not to be credited in a court of justice. This is the lenity, which the court of King's Bench shews to defendants, when it admits every allegation to extenuate their guilt; that, those who venture to make such affidavits agreeable to their conscience are to indure the invectives of a judge in that court without redress. This is the mighty advantage, which Lord Mansfield constantly holds out to those defendants, to suffer themselves to be convicted before this merciful court, telling them in his canting tone *that it will do them no harm*, if the paper is afterwards found out not to be a libel; that when their friends shall appear in their behalf, these friends shall be treated as culprits, and made liable to imputations of the worst impression. An error in judgment, a mistake in law, or, if you please, an astonishing doubt of a ministerial faith, shall be treated as a heresy unpardonable; the miscreant deprived of all claim to credit in every respect, and be

rendered unworthy of any attention in a court of justice.

The stigma however, with which, Sir, you branded my affidavit might be less exceptionable, had you confined it's effects to me alone. When you said, that you would pay no attention to any affidavit of mine, you did injustice to the defendant. He had a right to my testimony, which I gave to him unasked. You deprived him of it; and I herein see additional wisdom in the law, which has not left in general to judges the weight and import of evidence; and which, I am equally satisfied upon my part, notwithstanding Lord Mansfield's doctrine to the contrary, has not left to them an exclusive decision upon the actions of those, who are accused of publishing a libel. I know Mr. Justice Aston has a precedent for his behaviour in a brother judge and commissioner, who lately showed his readiness to set aside a witness at Guildford in a trial for murder, because he began with relating some expressions that he had used in an alehouse, con-

taining his dislike to the Scotch nation. But in that case an objection was made to an evidence for the prosecutor, which is a more favorable circumstance for the judge, than the present case admits of; for there, the prosecutor of a capital indictment could only lose the benefit of a material witness, because the judge took a pique to his political principles; in this, where by the artifices of Lord Mansfield and the adopted resolutions of the court of King's Bench, the trial for a libel is almost reduced to a trial by affidavit (that mode of inquiry, which turns the insulted witness from the confronted examinations of the bar to the protected censures of the bench, which submits every thing to the court, and which is therefore so acceptable and so favoured) in this the defendant, though always most to be tendered, is at one stroke bereft of the testimony of any witness, however material, who may differ either in principles of law or politics with any one of his judges. The importance of my evidence was proved by the allegation of the Solicitor-General; who urged, that the defendant, when

he first stopped the sale, might have hid his books in a garret, till he had an opportunity of selling them to the friends he could trust. This supposition is directly precluded by the contents of my affidavit; for it could hardly be doubted from my character, and that particular station, which the title-page of this letter exhibits, that it was possible for Mr. Almon to mistake me for an informer.

I think I have proved that I did not go out of my road to introduce that opinion, which has given you so much offence. I believe too I can as easily make it appear, that you did go out of your way to rebroate that opinion; for which purpose I must desire for a moment your attention to Mr. Miller's affidavit; from whence it might with as much propriety be concluded, as from mine, what his sentiments were upon the paper in question. Mr. Miller swears that he caused to be inserted in the London Museum, the letter signed Junius. He will hardly be suspected of accusing himself, in this deposition, of printing and publishing a libel. He must

then be understood, whilst he avows the act he did, to esteem himself at least inculpable. This will be saying to the full as much, as that he believed the paper not to be a libel. Yet Mr. Miller is allowed to be entitled to that credit, which Mr. Morris cannot obtain. So that the deposition of an indifferent person, who declares, that at the time he accidentally purchased a pamphlet, he did not believe it to contain a libel, is adjudged inadmissible in a court of justice, whilst the affidavit of the very man, who styles himself the original printer and publisher of that pamphlet, is esteemed very deserving of credit, and made one of the grounds to influence the judgment of the court. But in fact, the one after an oppressive prosecution for printing that letter of Junius, has been acquitted by his country; and I wonder no mode has yet been devised to bring the other to punishment for the crime of his belief, other than that kind of extrajudicial torture, which a judge knows how to inflict by personal reflexions.

I should very readily plead guilty to the charge of believing Junius's letter not calculated or intended to raise a rebellion in the kingdom. If the contents of that paper have been, as Mr. Justice Aston said, too effectually dispersed, and too well known to need a comment, what has become of the sedition, insurrection and rebellion, which, he said too, it tended to produce? have such effects followed that publication, or any the most virulent libel in former days? has there been the least tendency to them in the present instance? A nation is not provoked to blows by words, but by actions; but it is for words more than for actions, that subjects are punished by arbitrary ministers; whilst to screen themselves they frequently protect the greatest delinquents from the law. Yet there are times, when even rebellion (though the resistance ought then to lose its name) may be justified and be useful to the state. Witness the reigns of the tyrannical father and son, Charles the first and James the second. I will not say so much of these times. As to libels, if ever that universal abhorrence,

which is spoken of took place against them, they must have been other things, than at present we find them. They were then no doubt totally unfounded in truth, and notorious calumnies upon the most innocent characters. But truth and our present chief justice are at such a variance, that it is now adopted as a most favourite maxim, that truth is the highest aggravation of a libel. I confess I have the misfortune in this to differ from very great opinions. But I have no opinions, of which I am ashamed; though I may have many that are erroneous, and that differ from those of Mr. Justice Aston and his friends. The time may come when his opinions may be changed. He knows very well, that the sentiments of men do change with times and circumstances. Were it possible for me, which God forbid! when many years and long experience shall have ripened my judgment to stand candidate for the honors and emoluments of my profession in the royal disposal, I might then perhaps as other men have done before me, find it the wisest way to be *of the same opinion with my lord chief*

justice, and like old Judge Page, think *it would very ill become me* to differ from my lord chief justice. In his time, Lord Hardwicke was dictator of the law, an officer to whom in Westminster hall we are well used; one like Lord Mansfield the greatest and the least of men; hardly quite so honest and so universally esteemed; for it were a wonder if such a reputation, as Lord Mansfield has with mankind, could have fallen to the lot of another. At present, however I may differ from my lord chief justice, it is not from the same motives which induce some of his friends to agree with him. It is not from the sordid motive of fear, or the still more sordid one of interest. And though youth is less apt to be swayed by such influence, than age, yet I know no principle, that even in the earlier period of life (when, if a man has any generous sentiments in his soul, they will appear) can counter-balance the united bias of fear and interest, except that enthusiasm which the love of truth inspires.

There was a time, Mr. Justice Aston, when I believe, you had not that fondness for your chief justice, which you now pretend. Have you forgiven him, when, in the words of the last letter upon libels, he ridiculed *the book-read advocate* and *plodding counsellor*, who had confessed to his friends the pains he had taken, and, in defiance of common sense, thought himself peculiarly happy in the black-letter cases which he had cited? have you forgotten the expressions of bitter passion and avowed resentment, which you then and often since expressed against him? Nothing was lost on either side in the reciprocal hatred, that was well known to the whole Oxford circuit, which you attended, as well as to a late lord chancellor, who had often heard from you animadversions of a very free nature indeed, upon Lord Mansfield's behaviour in court. Who was it placed all that difficulty to your removal from Ireland, from whence a whole nation longed to see you depart? It was by the most uncommon assiduity, by the sincerest humiliation, and by perfect and repeated assurances of respect and

devotion, you removed the obstruction in your way, conciliating to yourself Lord Mansfield through the mediation of a Lord Lieutenant, whom you had pursued with equal adulation. The strange alteration of sentiment, which often ensues upon being advanced from the bar to the elevation of the bench, has been in none more conspicuous, than in you. But Lord Mansfield is now a confidential minister, and Sir Richard Astor a commissioner of the Great Seal. One thing may be said in your praise, that you have been true to your promises, and have since shewn yourself worthy of Lord Mansfield's forgiveness; adding one farther proof to the observation, that none are greater friends than foes, who have been reconciled; whilst his lordship blushes for his want of discernment, in not having sooner kenned the man, so well calculated to do his business.

I can now very readily believe, that a judge, thus promoted, one who by the favor of his chief justice has had so many sweets of government, and therefore, by the usual rule, thinks

himself likely to taste many more, will be very apt to dissent from a humble supporter of the Bill of Rights; that he shall be eager to snatch from vulgar observation the actions of a minister, which I might be as willing to expose to public execration; that a judge, who has lately joined in declaring, the malice, the guilt, the tendency of human actions not left by law to the cognizance of a jury, but of a court; will be ready to compliment every spirited publication, with the title of a libel, which has caught the ear of the public, and join to it all that litter of epithets, *scandalous, seditious, infamous and malignant*, which he has in his power to bestow under the style of legal inferences, and which when bestowed are said to be merely formal and of no importance; that the intimate and sycophantic friend of Lord Mansfield should express his horror and aversion to the freedom, which is taken by so celebrated and obnoxious a writer, as Junius, in speaking the truth; who has not only addressed the King, but Judge Aston's chief justice too; all this I can readily believe. But why this savage intolerance of other opinions? Why make

use of the sanction of a court of justice to brand with the crime of perjury a person, who in a manner was precluded from reply? Granting that a libel is matter of mere legal decision, who before ever heard of a perjury in matter of law? If one more crime is to be submitted to the discretion of the judges, that they may in time arrogate to themselves a similar exercise of every branch of criminal judicature, I call upon Mr. Justice Aston, as a lawyer and a judge, to shew any connexion between the astonishing opinion of a man, that a paper lying before the court is not a libel, and the incredibility of that man in any matter of fact, which may have come to his knowledge. Is such a man either *infamous* or *interested*, that he is not to be admitted as a witness? Will you, Sir, after particularising the various convicts, of treason, felony, perjury, or conspiracy, add one more to the black catalogue, and give it as another cause of challenge to a witness, that he dares to dissent from your opinion? Wo to the unfortunate wight, who is so far mistaken in politics, as to think Junius an honest writer,

in giving that advice to the King, which the greater part of the nation say, the King would have shewn his wisdom in following! He is the last man to be received with favor in a court of justice. Are such then to be the first-fruits of the glorious position, which has lately been established by authority, that the question of libel is mere matter of the judges cognizance? Surely if it is a question of this sort, a judge, who knows the intricacies and subtleties of the laws of England, ought to have had some tenderness for a young barrister, if he had shewn himself mistaken in his first opinion upon a libel. But if this matter partakes in the least of a fact within the knowledge of common understandings, then alone can there be a shadow left for his imputation. In this light the subject of libels is at times manifestly treated, when an appeal is formally made to the common understandings of mankind, whether the letter of Junius has not raised an universal abhorrence. At another time indeed this is looked upon, as a matter too sacred for common discussion; fit only to be

reserved to the justices of the bench. What strange contradictions are even the most ingenious men led into by the slightest variation from the line of truth! No wonder then we observe so clearly this contradiction in the present case. Even the artfulness of a Mansfield could not save his friend from this confusion. You are then, Sir, reduced to this dilemma, either to confess yourself guilty of a false and injurious charge, or give up the arbitrary doctrine of the fact of libel being merely matter of law, and I will be content to undergo all the odium of your insinuation, whilst I regain this point for the subject; though, I hope, through the medium of honest and intrepid juries, it has not yet been quite lost.

I am apprized indeed, that the private opinions of Lord Mansfield have now received the sanction of the court, where he presides. The point, which he so artfully has laboured; the principle which he so long has fostered in his breast; which he had thrown out in courts of *Nisi Prius* by stealth and by degrees;

being at length sure of his fellow judges to back him, he has now openly given to the public; and we have seen his sentiments carried into complete execution in the KING and WOODFALL; a case, which in all probability would never have been again brought on, uncalled for as it was, but to give this triumph to the Scottish chief. He has lived to give the severest stroke he can, to the liberty, which is claimed, not indeed by his countrymen, but by mine; and he will now depart in peace. I am satisfied, that a greater shock was not given to the freedom of the constitution by the base judges of Charles the First, who against all the dictates of their conscience and of law subscribed their opinions in favor of ship-money. We know the fate, which that determination experienced, and I can prognosticate a similar one, though from a corrupt influence upon the legislature, which Charles did not possess, perhaps not so speedy, to await the other. The opinions of Lord Mansfield are too heterogeneous to become the law of this free land. Shall such be the *lex terræ* for which

our ancestors stipulated in the Great Charter? Or is it not rather a branch of that law, which the apprehensions of our fore-fathers, when they resisted the introduction of a new system into this country, and replied with a noble disdain, *Nolumus leges Angliæ mutari*. Is this to be the epoch of that change? No; sooner shall the sons of Scotland prevail in arms in this country, than we submit to receive law from a chief justice, bred in all their arbitrary principles. It is impossible, that this judgment of the King's Bench should not be revised in parliament. If there is the slightest regard remaining for the liberties of this country, we shall see the errors of that court reversed with ATONEMENT,

Whilst the offence of libelling is treated as the most dangerous, hateful, and flagitious, the King is consulted upon the revenge, which he would chuse to take upon his admonishers; for it was manifest from Mr. Justice Aston's speech in passing the sentence upon Almon, that his Majesty was not quite out of the secret of that prosecution, and the

consequent proceedings; any more than he probably has been of many others, which have come before the King's Bench. This intimacy between a King and Judge is in my mind highly detrimental to the first principles of the constitution; it confounds two officers of the state into one, and intirely destroys the distinction between the judicial and executive part of the government. At the same time the determination of the crime of libel is attempted to be wrested from the hands of juries; and our liberty and fortunes thrown at once into the power of the court. To give the judgement in this case the most solemn and permanent effect; to shew with what deliberation it was made; no random opinion; and that the whole court concurred in every word, as well as thought; Lord Mansfield, the most ready and eloquent man of the age, practised in the art of speaking in public from his youth, submitted to the drudgery of reading his speech, without once taking his eyes from the paper. The doctrine there held out was, I will be bold to say, the most pernicious and abominable ever

broached by the most abject lawyers of prerogative in that sink of patriotism, Westminster-hall. From the single fact of publication, a criminal intent is declared impliable by law, though no reference of the intent be made by the jury to the court. The express denial of a crime is declared a conviction; the most thorough persuasion of innocence, a complete proof of guilt; and, at the last, a total misapplication of the charge upon the conduct of a defendant is made tantamount to a delinquency and an inevitable sentence of condemnation. I will quote Lord Mansfield's own words: "*The law implies, from the fact of publication, a criminal intent. If the jury meant to say, they did not find the paper a libel, or the intent of the defendant to be criminal in publishing it, or that they did not find the truth and application of the epithets in the information; all this would not have vitiated the verdict: for it would have been entering into matters not before them.*" It was not enough to say this, but we are told also, that "*guilty of printing and publishing is a general verdict of*" being "*guilty*" of a libel. Print-

ing then and publishing, which used to be lawful trades in this country, are become of a sudden criminal. A man, for this exercise of his trade, upon a verdict so worded, contrary to all the dictates of justice, has been fined, pilloried and imprisoned. His counsel, it is true, did not take advantage of his case; but the eyes of the court were open: for Lord Mansfield took care to make a public boast of it. He then concluded with saying, “ *It would be improper now to make a question of the law as I lay it down.*” I, on the contrary, deny it to be law; it never was law; and never can be law in this free country. The great province of a jury in criminal matters is to make true deliverance of the subject from false accusations, and especially from oppressive prosecutions of the crown. They are not to turn him over, as a suppliant, to any other tribunal. Like the King in the extension of mercy, they never make so noble an use of their power, as when their consciences permit them to acquit. Yet the law is so tender of innocence, so desirous to give protection to the accused, even after

conviction by a jury, that it still permits a recourse to the court to arrest the judgement. I am persuaded, it is from this auxiliary interposition in favour of the defendant, that courts of justice ever became capable of entertaining any legal question as to the import of a supposed libel. But the power, (which they ought to exert for the indemnity of defendants, if by any rules of law they could find the publication, upon the face of the information, not to be such a libel as charged) has been perverted to an instrument of their destruction. It was a jurisdiction allowed the courts merely for the benefit of the subject, and by the constitution never capable of being legally used to his oppression. We see that in actions of slander, the judges can arrest the judgment, if the words do not in their opinion clearly amount to an injurious reflexion; and so in criminal matters, if the indictment is framed in such a way, as not to charge a crime punishable by the law, they may interfere. But this is very different from arrogating to themselves the sole decision; as they com-

pletely do, whilst they declare, that evidence of an innocence of intention is inadmissible at the trial; though in their great mercy, they will admit it, after conviction thus obtained by the lawyer's artifice, in mitigation of punishment. The case must be very plain indeed, before they can arrest the judgment of the jury. For the question of a libel, however much talked of, as a matter of law, seems to me almost incapable of being considered in any other light, than as a matter of fact. The lawyers are to determine whether sedition is a crime and in what manner it is punishable; but, what conduct or words shall amount to sedition or a libel, is the province of a jury. The notoriety of truth and falsehood, the purport of expressions, the tendency to sedition, the infamy, the reproach of language, can never so well be decided as by the common class of mortals to whom the publication is made. Who more interested than juries (for juries are composed of the people) to preserve the peace and order of the state? It is for their security, that government is

established. They can be only losers by its demolition. It is for the people, that we have a king; not for the king, that he has a people. If judges were in all matters of libel to consult their musty books and forgotten cases, they might find religion to be a crime, the love of liberty sedition, and the principles of the revolution downright treason. Juries are a tribunal ever changing as the times; they judge of men's writings and actions by what they see and feel. But judges must go by strict rules of law; which I again contradict the Scottish chief, in saying, never grow obsolete, but when they are repealed.

I cannot dismiss this case of Woodfall, without observing that if nothing more was within the province of the jury, but only printing and publishing, the jury, in finding only those acts, found all that was left to them; and the court should upon their own principles have passed a judgment of conviction. But Lord Mansfield feared, this would make the violence of the case too con-

spicuous ; which he therefore chose to disguise under the more moderate award of a new trial ; knowing at the same time such a trial could never be had, and hoping the memory of the case would sleep in the minds of every person, but the lawyers. He will find however to his mortification, that Englishmen are ever watchful over their liberties ; their alarms not easily allayed ; and every invasion of their public rights not to be expiated, but with punishment. I recollect there was a paltry subterfuge taken up, that the jury might, by their word of exclusion, intend not to find the whole sense put upon the innuendos ; but there could be no foundation for this, if the opinion of Judge Aston was right, that *when the jury found the printing and publishing, they did not find the printing and publishing that identical paper sold by the defendant, but that paper charged in the information.* This seems to me a position most extraordinary. It is not the defendant, that publishes the paper charged in the information, but the prosecutor. A lawyer, and above all a judge, should

be industrious to make that construction which will be intelligible and uncontradictory; and when he has done that should pursue it as the ground work of his reasoning. If we understand the verdict, as an exclusion of the libellous charge, every thing becomes clear. Sophists are always dangerous, but more especially in the law. However, sometimes they are a match for themselves. We saw, that Lord Mansfield was obliged at last to submit to the disgrace of having received a verdict, which he had not dexterity enough to twist to his purpose of conviction.

To the light in which I have considered the trial for a libel it will be objected, and so it was. by Lord Mansfield at the trials in Guildhall, that a door is given to the greatest uncertainty in offences by leaving the decision to juries; and that in consequence there may be one law in London and another in Middlesex. This, I acknowledge, cannot be avoided; but to men of honest understanding the matter will in general be plain, or

doubtful in such a degree, that a conviction should almost work the same effect as an acquittal. For what is the sentence, which can in justice be passed upon a person for doing that, which in the actions of others has been declared to be innocent? We should hardly expect that sort of caution to be exacted from him for two years, which if the present doctrine holds, of merely publishing being sufficient to convict, must be an absolute interdiction of his trade. Honest men I know may often differ; and if the question was left to the judges, and we could expect the same honesty from them, we might still be in doubt, what their judgment would be upon the contents of a publication. It was said even by Judge Page, in the case of Mr. Earbery, that the court could not tell upon the face of an information, whether the objected words therein amounted to a libel, *for the merits must be left to a jury*; and I believe no instance can be produced, or ever will be found, where the court, after a general verdict of guilty upon an information for a libel, have decided in favour of the defendant,

from the innocence of the publication. Lord Mansfield was too well known by the city juries, for them to commit the defendants to that lenient resource; where upon the best issue of things, they will be obliged to sit down with their pecuniary losses, whilst they console themselves in being saved from a prison. Thus would juries, the guardians of every man's security, be rendered in prosecutions for a libel mere nugatory pageants; the tame instruments of conviction, incapable of securing innocence; for which that mode of trial was principally devised. What would this be, but constituting the court of King's Bench in the case of libelling, a complete court of star-chamber; it has long claimed to itself the powers of that abrogated court, seized upon their odious jurisdiction and closely followed the example of their punishments. This will be nearly imitating their oppressive course of trial. The defendants are to be turned over to a trial by affidavit, and the intervention of a jury prophanely metamorphosed into a solemn farce. For the printer and vender's trades are car-

ried on in open daylight. It needs no nice understanding to discover the exercise of them. These acts are usually most incontestable upon the trial, are generally acknowledged, and hardly form a part of the inquiry.

The court of Star-chamber was not complained of only, because they did not call in aid a jury to determine the simple fact of publication. That was mostly ascertained by the acknowledgement of the party, or the abundant testimony of witnesses. The great complaint was, that the same court, which inflicted discretionary punishments, assumed to itself to decide upon the guilt of men's actions, which, by the laws of England, is the exclusive province of a jury; unless where *unintimidated* and *uncontroled*, they chuse to state the special facts, and leave the criminality to the court, which superintends the trial. It is because the jury express their own uncertainty, that special verdicts leave the operation of the law to the judges; which of itself is enough to convince us,

that where they are certain, they may and ought to take the determination upon themselves. The power juries most undoubtedly have, of determining, upon the general issue, both the fact and the law which arises out of that fact. It is moreover their duty to do it, where the law is complicated with the fact; and this, judges will at some times be honest enough to tell them. The question of libels is very well able to be decided by juries, when they conform to the court, and bring in a general verdict of guilty; which as much comprehends the law, as an acquittal does. But when they decide otherwise, they become quite incompetent judges, and *meddle*, as Lord Mansfield once said, *in matters with which they have nothing to do*. Nor is this reference of a special verdict to be made from the niceties of the fact, but only where some great point of law remains still to be settled, that sufficient time for consultation may be left to the judges to declare it; and it is not even then to be made, otherwise than by the free submission of the jury: unlike that case, where it is said,

through the mere violence of the judge, the jury were constrained to tamper with their consciences, and express a doubt in their minds, when the evidence had left no doubt remaining. Nor can I omit to mention upon this occasion a similar treatment of yours, Mr. Justice Aston, to the second special jury, who tried the cause at Worcester between Withers and Wingfield; when you refused to allow them time to consult upon their verdict, because the evidence seemed to you so plain: and after you found the disposition of the jury to be against your opinion, you threatened them with the court, and encouraged the counsel to play the game of demurring to the evidence, that it might not go to the jury at all. The end was answered, and this demurrer never more heard of; but by this means the court obtained at last a jury, which agreed with them in opinion upon a third trial; having previously lessened the small list of special jurymen in the city of Worcester, by the deduction of twenty-four, who were of another sentiment. There is hardly any cause, which

might not in some trial at last receive a different judgment. Neither, sir, do I forget your proceedings with counsel, as well as with juries; when at the same trial, which I have mentioned of Justice Gillam (a question being debated upon the granting a copy of the indictment, for the prisoner to institute an action for a malicious prosecution) you silenced one of the counsel for the prosecutor by lolling out your tongue, and saying the court was with him; and the very next moment, upon a whisper from the Recorder, determined against him.

Proceedings of this complexion go very near to abolish the trial by jury, or to drive them into a mere contest of jurisdiction, which might be apt to produce hasty acquittals in some cases, purposely to counteract the usurpation of the courts, lest convictions should be esteemed an acquiescence in their doctrines; if our ancestors could have consented to such a badge of submission, there were those who presided in the court of Star-chamber to the full as honorable, and,

I solemnly believe, to the full as favorable to liberty, as some of the present judges of the King's-Bench. For the same complaint may now, in the case of libels, with justice be made against the court of King's-Bench, which before lay so heavy against the Star-chamber. The defect in the constitution of that court was simply this. It made the liberties of *the many* depend upon the integrity of *a few*: the same has been attempted in the King's Bench. A permanent tribunal, when corrupted, is the worst of tyranny. By our judicial polity, the peculiar province of a judge is to determine the law, unconnected with any particular circumstances of fact; a rule which is found in every law-book, and which cannot be controverted. We may from this plainly see, why that pernicious doctrine has been so strenuously urged, and supported by the ablest lawyers, who are willing to draw every thing to themselves, that the falsity in particular of a publication is unnecessary in a charge of libel. Lord Mansfield is too intelligent in the law, not to be aware, that no court of

justice can intuitively determine, whether a charge is false or true; because they can take no notice of any matter out of the record; as every proof of fact (for truth and falsehood will at least be allowed to be facts) must necessarily be. Every thing which may, nay which must be uncertain, in the particular case, is left to the judgment of another tribunal, a tribunal, to be taken by lot and by rotation from among the people; which is therefore perpetually changing; which, if corrupted, the evil can extend only to the oppression of a single individual. For this reason the trial by jury is justly deemed, by the people of this country, the great palladium of English liberty. Juries are the idols of Dr. Blackstone and of Englishmen; but I tremble, lest in time it be truly said of them, as of other idols, that they have ears and eyes and mouth, with which they cannot, dare not, hear, nor see, nor speak, nor understand. Should the judges of the court of King's Bench endeavour to usurp a power of punishing without control any action, which they may think criminal, it will be impossi-

ble to persuade the people of England, that such judges do not endeavour to revive, as to it's effect at least, that detestable court, the Star-chamber. It is manifest Lord Mansfield is desirous to drive the printers into a petition for a licenser. It would be more humane at once to let them be warned by such a minister of their own perils. It appeared upon the late trials, that the informing *messenger of the press* is still preserved; though there is so much modesty in men, that I do not find this officer as yet inserted in the kalendar of the court. As we have seen the jurisdiction of the messenger lately put into use, Lord Mansfield I doubt not began to flatter himself with seeing soon the licenser's also revived. Since common understandings are not to be allowed to judge of libels, it is impossible for the *ley gens*, as the lawyers affectedly call the people, to know what is safe to publish; and it is equally impossible for a lawyer to give his advice. He cannot, from any musty reading of books, know the effect, which a publication may produce in the minds of men; and therefore cannot divine whether it

is a libel. I should doubt, whether a panegyric upon Mr. Justice Aston might not be deemed so. The lawyers cannot define a libel without reference to other terms, which are uncertain 'till determined by a jury. And yet when a publisher is charged with the design of exciting traiterous insurrections against the government, they tell him, it is matter of law. To be sure the law is very kind to impute that design to his actions, as an inference of course, which is not allowed to be within the competence of a jury to discover, though sworn to inquire.

If I have fairly exposed the modern doctrine of libels, if I have given it to the world to meet with that degree of horror, which it deserves, can we any longer hesitate to belie the insinuation, that the honest Yates is among the dead, who have ratified it with their assent? Timidity or respect might have long imposed a silence upon his mind; but we found, that even his patient perseverance was obliged at last to yield to his great abhorrence of the things, which he saw daily

passing before him, shocking to the native integrity of his conscience ; which would probably have broke out into an impeachment of the secrets, which he knew, had not death interfered ; and I doubt whether it permitted him at last to leave the world without imparting them to a friend. The vacancy which was then made in the Common Pleas was eagerly filled by Blackstone, possessed of much less patience, and alike unable to continue in the King's Bench. Who can stop this inundation of oppression, which the lawyers have ever in store for the people ? None, but the Jurors of England : upon whom I call, not to leave the cause of their fellow-citizens to men, nominated by the crown, however dignified ; and above all, not to leave it to the officers of the law, who have never been over-favorable to liberty. Judges are still liable to temptation ; their salaries have not rendered them so independent, but some are seeking for pensions, and some rewarded with lucrative places, which they hold at the mere pleasure of the minister. The leaders of the bar enjoy an income so

much superior, that the place of puisne judge has gone a begging to men of despicable abilities; and we may almost venture to say in the words of Sydney, that judges will soon be promoted to the bench, who are a disgrace to the bar. This must undoubtedly often be the case, whilst that shameful distinction prevails in the courts of giving the lead and greater emoluments to one chief; to whom the rest become of course subservient, and look up as to a deity; though the law and constitution have given them all an equal power. These keep a steady eye to that point of promotion, which is always hung up to their view; and from the strange mixture of politics, which is now admitted into law, no period happens, in which the judges can be placed above expectation and dependence. In the mean while, such is the disparity, that, in the absence of the chief, the principal counsel turn their backs, and laugh at those before whom they plead. The additional incomes, which may render them superior to such affronts, are given upon such debasing terms, and as a reward for such

subservient conduct, that they rather tend to lessen than increase the respect. It has not been enough to deprive the nation of a chancellor most justly distinguished in a people's favor, but that office is kept unfilled for a year, that the profits may be divided by commission among judges selected from the bench, the most thorough-paced servants of ministry. By this division of the great seal into a commission, the chief himself is equally made dependent with his brother judge. What two thousand pounds can effect upon the one, five can upon the other; for so much does Lord Mansfield get, by acting as speaker to the house of lords, whilst that office is unsupplied by a chancellor. He has not been an orator to no purpose. Superior as he is to fame, he has not been so to interest: and his talents deserved to be rewarded. He is now able to bestow reward upon others. Great and numerous indeed are the advantages, which flow from the vile trade of submission. Some we see compensated with lucrative sinecures, new-invented places, and even pensions for their mistresses. With two others

these sweets of government put on the appearance of judgeships, commissions of the great seal, and even a bundle of lottery tickets. Stand forth, Mr. Justice Aston, and tell me, what other douceurs you have received for your last year's services, besides the pre-emption of those four hundred tickets, with which you went yourself into the alley the Saturday before the drawing ; where you staid in the vile receptacle of stock-gamblers at Jonathan's, after midnight, to improve your job to the utmost advantage. Believe me, Sir, there is a combination formed among the brokers in return for the paltry saving of those fees, which they esteemed their due, as to brother-commissioners, when you next make your appearance there, either as a BULL or a BEAR, to *bustle* you out of the place ; a disgrace, that hardly your worst enemy would wish to befall you, because it will make again notorious to the world the situation where you are found ; which even your modesty might teach you for the future to avoid.

Yates began to think, that a barefaced complaisance and fulsome deference to a chief justice sullied the dignity of the ermine robe, and betrayed the littleness of the wearer. But what would he now say of such a shameful sacrifice by a man, who neither loved nor revered the character of the chief (and who had indeed very little reason) 'till he came himself upon the same bench? If judges ought to have such distrust of each other, is not this more than ever the time, for juries to vindicate to themselves the noble privilege of deciding upon the actions of their countrymen; which the constitution has solely placed in their hands, and which courts of justice are attempting to take from them. They surely will not render themselves the tame vehicles of oppression. The destruction, which is now aimed at others, must, if it receives their assistance, soon fall upon them and their posterity. They have it in their power still to save their country; if as often, as the printers and publishers of writings, filled with the spirit of liberty, calculated to inform the king of the mistakes of his government, ex-

posing with becoming animadversion the evil acts of ministers, and dictated in the principles of truth and loyalty, they regard not any evidence of publication, but, as they ought in conscience, acquit the accused.

This is a language, which in the ear of Mr. Justice Aston, I doubt not, may sound very grating; but I could with pleasure go farther, and enter here into a full defence of that celebrated paper, which appears to have given such uneasiness to the king and his ministers; if the paper stood in need of a defence. But as Mr. Justice Aston has been bold enough to assert, that the letter is *false, disaffected, and universally abhorred*; I too will take courage and assert, that it is *true, loyal, and universally applauded*. It has been prosecuted as a virulent libel: juries have acquitted the publishers. It is printed and reprinted in every pamphlet, sold in every shop, openly advertised, and read by all mankind. Having failed in prosecuting the publishers, the next step to be taken is to devise a new mode of prosecution for the punishment of

those heretics, who may approve of court-libels. I crave the honor of being the first victim. Yet heterodox as my sentiments are, Mr. Justice Aston need not be astonished, when he is told again, that I am not the only one in the kingdom, who has subscribed to such belief. The citizens of London I have before mentioned; and I will now mention all the petitioners and remonstrants of the nation. On the contrary Mr. Justice Aston has declared in effect, every man, who thinks that performance of Junius innocent, to be ready to perjure himself and undeserving credit. And are all the petitioners to be included in this charge? What a compliment this to more than half the nation! It is well known, they have carried the same complaints to the throne, which form so conspicuous a part in the letter signed Junius. Juries have in their verdicts only echoed back the language of the electors of Great-Britain. The justice of the complaint has been acknowledged by the disinterested members of the House of Commons itself; and handed down to posterity in a

protest, signed by the noblest, ablest, and most respectable characters in the House of Lords.

It will be allowed, when Englishmen have lost one of the most important privileges of subjects, they have, like other losers, still a right to complain: or are we to be answered nearly in the words of our sovereign, that refusal of redress has annihilated those complaints? But if in such answers the crown has it's prerogative; we too have ours: one of which is the liberty of reply, when we are insulted or accused. This is at least a liberty, which I will exert with becoming spirit; not intending to follow that consummate example of patience, which Lord Mansfield has shown under accusations of the most weighty and reproachful kind. The same lord is said to have declared, that a meeting of electors shall not be privileged for disrespectful censure, upon their own unworthy representatives in parliament, in matters that concern the immediate interest of the constituents. I see then at least as

little justice, why a court of law should be privileged for abuse upon me, or any other person.

I have now gone through the irksome task of justifying myself from so *butcherly* so *savage* an attack, not only on myself, but on many of my friends, who I have heard frequently maintain the same opinions, and who would be ready to testify them in any court of justice. That sacred love of truth, which should possess the bench, that purity of morals, which should be shown in the conduct of a judge (who otherwise praises the example of his virtuous sovereign to little purpose) ought to teach him better charity for his neighbours, give him less suspicion of their guiltiness, and leave him superior to all exception, before he fixes a wanton accusation upon others. I could not when the opportunity was before me, resist the impulse of my conscience, to express upon my part a thorough conviction of the legality and uprightness of a publication, of which I should have been glad also of an op-

portunity to express my intire approbation. I can equally as little resist the dictates, of my resentment for the treatment, which that conduct received, and of the consciousness of my duty to lay open to the world, transactions and opinions which cannot be too well known, detested and exploded. I may now forgive you, Mr. Justice Aston, for your censure ; which I think will be retorted upon yourself. I hope you did well to say, that it was upon your part only, that no attention should be paid to any affidavit of mine. Whilst you are judge, it may be unfortunate for those, who may have depended upon my testimony, for the proof of transactions, of which I may be conscious. I can never believe, since Lord Mansfield was absent, that either of the other judges concurred in the censure. After four months consideration, you pronounced your mild judgement upon me, written down in that preconcerted sentence, which, when the arguments of counsel had been heard with solemn pomp and attention, you pulled from your pocket. After not many more days, I print my defence. This

K.

was the only writ, that would lie against you. It is, I confess, almost as long as a modern bill in chancery. Weigh however the charges contained in it, you will not find them of a blacker nature, than that you have brought against me. If they are urged with warmth, they are not at least like yours, unprovoked. Whether they are not better founded (since only your court should claim to be judge in their own cause) I will leave to the determination of the public.

“ THERE is no shuffling; there the action lies

“ In it's true nature, and we ourselves compell'd,

“ Ev'n to the teeth and forehead of our faults,

“ To give in judgment.”

But for what reason do I apply to you, Mr. Justice Aston? I look upon yourself to have only spoken the dictates of Lord Mansfield. He would have said as much; but as usual, I suppose, had not courage, and put it upon another. You may if you please

come again to the succour of his lordship, and, to pacify both your indignations, answer this letter by an attachment or information. It is equal to me which mode is pursued. If sent to a jury, and they are only left to inquire into a fact, which will not be denied, I shall be equally turned over to yourself, as party, judge and executioner. Or you may possibly, in the latter case, give a fresh exercise to the integrity of juries. In the other, you can do no more, than devote, unless the spirit of the nation shall forbid it, another willing sacrifice to the violated right of Englishmen, a trial by their peers; 'till the same tame spirit of moderation shall teach the court to sneak out of the scrape, of which they have already shown an example, with the assistance of the attorney-general; who is well known to have been used, but as an instrument, to cover the shame of his employers. But should you, sir, in a more covert manner, chuse to fly to the still more arbitrary expedient of extra-judicial invective, I may perhaps in the future pay as little regard to your displeasure, as little respect, as

much indifference to that undeserved, unprovoked, illiberal reproach, which I have received at your hands, as you can possibly pay to my testimony upon oath. For my part I am possessed with that regard for my country and my own character, that nothing shall deter me from persisting to speak those truths, of public import, which come to my knowledge in my attendance upon the courts of justice; I will watch with attention those courts, from whence the liberty of this country has every thing to dread; and should I in due time be furnished with sufficient matter for inquiries and impeachments, to institute them is a task, which if the good opinion of my countrymen shall ever seat me in the House of Commons and the arbitrary mandate of a minister shall not as instantly turn me out, it will be equally my duty and ambition to undertake.



Lincolns Inn,
Dec. 11, 1770.

Robert Morris.

